UNITED STATES DISTRICT COURT	EASTERN DISTRICT OF TEXAS
ESAU POREE,	
Plaintiff,	8 8 8
versus	§ CIVIL ACTION NO. 1:17-CV-529
ROCHELLE P. ROGERS,	8 8 9
Defendant.	§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Esau Poree, an inmate at the Lewis Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights lawsuit pursuant against Rochelle P. Rogers. The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court.

The defendant has filed a motion for summary judgment. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motion be granted.

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

Plaintiff alleges the defendant failed to protect him from being assaulted by a fellow inmate. Plaintiff states he told the defendant he should not be housed with a member of the Mandingo Warriors or the Crips. He states the defendant agreed with him. Nevertheless, he was placed in a cell with a Mandingo Warrior. Plaintiff was subsequently assaulted by gang members.

In recommending the motion for summary judgment be granted, the magistrate judge found plaintiff had not alleged the defendant was the official who assigned him to the cell or that she was aware he had been placed in a cell with a Mandingo Warrior. As a result, the magistrate judge

concluded that, to the extent the defendant was sued in her individual capacity, she was entitled

to qualified immunity because plaintiff failed to show she acted with deliberate indifference to

To the extent the defendant was sued in her official capacity, the magistrate

judge concluded that a claim for money damages was barred by the Eleventh Amendment

to the Constitution.

In his objections, plaintiff states he filed an emergency grievance against the defendant after

being placed in a cell with a gang member. He also questions how the defendant, a safe prison

supervisor, could not have known he was placed in the wrong cell.

In order for the defendant to be liable in this action, plaintiff must show she was aware he

was exposed to a substantial risk of serious harm and that she consciously disregarded the risk.

Adams v. Perez, 311 F.3d 508, 512 (5th Cir. 2003). The magistrate judge correctly concluded

plaintiff failed to satisfy this burden. Plaintiff has submitted no competent summary judgment

evidence demonstrating the defendant was aware he had been placed in a cell with a gang member.

While plaintiff wrote a grievance against her, he has not shown she ever saw the grievance.

Another prison official responded to the grievance. Nor has plaintiff otherwise shown the

defendant knew he had been placed in a cell with someone who was likely to harm him. As a

result, the defendant is entitled to summary judgment in this matter.

ORDER

Accordingly, the objections filed by plaintiff are **OVERRULED**. The findings of fact and

conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is

ADOPTED. The motion for summary judgment is GRANTED. A final judgment shall be

entered dismissing this lawsuit.

SIGNED at Beaumont, Texas, this 16th day of February, 2021.

MARCIA A. CRONE

Maria a. Crone

UNITED STATES DISTRICT JUDGE